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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,460	03/29/2004	James Kline	JAK-001	8297
36188	7590	03/03/2006		
R'SUE POPOWICH CARON 2750 ELMWOOD AVE. BERKELEY, CA 94705			EXAMINER VANAMAN, FRANK BENNETT	
			ART UNIT	PAPER NUMBER
			3618	
DATE MAILED: 03/03/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/814,460

Applicant(s)

KLINE, JAMES

Examiner

Frank Vanaman

Art Unit

3618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____   |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>3/29/04</u> .   | 6) <input type="checkbox"/> Other: ____                                     |

### **Information Disclosure Statement**

1. Certain references cited in the information disclosure statement filed March 29, 2004 fail to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because the statement lacks appropriate identifying data for the non-patent "Other Documents". Non patent documents should include at least a date for the purposes of facilitating a determination as to whether or not the document constitutes prior art. The document has been placed in the application file, but the information referred to therein has not been considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609.05(a).
2. The US documents cited in the information disclosure statement have been considered.

### **Claim Objections**

3. Claims 2, 3, 5, 7-15, 17-23 are objected to because of the following informalities: The claim dependencies of each listed claim is unclear: Claims 2, 3, 5, 7, 8, 11, 13, 15, 17-20 and 23 are written to depend from "Claim B", while claims 9, 10, 12, 14, 21, and 22 are written to depend from "Claim -1". Appropriate correction is required. Care does not appear to have been taken to ensure that the claim dependencies are clearly set forth. For the purpose of this office action, claims 2, 3, 5, 7-15 are being interpreted as dependent from claim 1, and claims 17-23 are being interpreted as dependent from claim 16.

Applicant is additionally reminded that the declaration, executed by the inventor, specifically states, in part: "I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment referred to above..."

### **Claim Rejections - 35 USC § 112**

4. Claims 10, 12, 14, 21 and 22 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In the claims, numerous terms lack a clear antecedent basis: "the first extension element" (claim 10, line 1); "the second side panel" (claim 12, line 2); "the first coupling" (claim 14, lines 1-2; claim 21, line 2); "the first extension element" (claim 22, line 1). It appears that appropriate amendment of the claim dependencies (e.g., claim 10 should depend from claim 9, rather than from "claim -1") should rectify the antecedent basis issues.

### **Claim Rejections - 35 USC § 103**

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-8, 11-20 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shapiro (US 6,220,611). Shapiro teaches a carrier having a generally rectangular base (4) which supports two (9, 10) or four (9, 10, 30) wheels each supported by an axle, and to which are permanently connected first and second hinged walls (1) which may be positioned at a right angle to the base, at least one wall including at least one notch (e.g., 20, 22, etc.) at a top edge thereof; at least one panel including a coupling (16) therein; the bottom panel additionally having at least one coupling (66) and a handle (67) capable of connection to the coupling; the bottom additionally including at least one hand grip (15). The reference to Shapiro fails to specifically teach that the notch is adapted for the intended use of immobilizing a component of a bed (claim 1), particularly a crank handle (claim 16), however the notch is capable of such a function to the breadth claimed, and it would have been obvious to one of ordinary skill in the art at the time of the invention to use the notch for the

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purpose of immobilizing a crank handle of a bed for the purpose of allowing the cart to move the bed. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

As regards claim 4, the reference to Shapiro fails to teach specific dimensions for the notch element. It is old and well known to adjust the dimensions of an already taught element, and as such, it would have been obvious to one of ordinary skill in the art at the time of the invention to adjust the dimensions of the notch to be approximately 2-6 inches in depth and 1-3 inches in width for the purpose of ensuring that a user's fingers do not get wedged in the notch when the cart is in use.

As regards claims 5, 7, 12, 17, and 19, The reference to Shapiro fails to teach the use of a lining on one or more of the sides walls and upper face of the base wall. The use of resilient linings in carts and carriers is exceptionally old and well known, and it would have been obvious to one of ordinary skill in the art at the time of the invention to provide a lining on the side and/or bottom walls of the cart taught by Shapiro for the purpose of protecting items placed in or on the cart.

7. Claims 9, 10, 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shapiro in view of De Prado (US 4,166,638). The reference to Shapiro is discussed above and fails to teach the couplings on the wall elements as being connectable with an extension element which may be used to secure a load. De Prado teaches a cart having upstanding walls (26R, 26F) with couplings therein (figures 4, 5) to which are connected extension elements in the form of strapping (60R, 60F) for securing a load. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the couplings provided in the walls of the cart taught by Shapiro with old and well known extension elements in the form of the straps taught by De Prado for the purpose of allowing unwieldy items to be easily secured to the cart.

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### Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Simjian (US 4,887,836), Gray (US 5,149,125), Kleinhenn (US 5,263,701), Crowell (US 5,857,695), Weck et al. (US 6,224,072), Nandram et al. (US 6,880,837), and McLerran (US 6,979,005) teach carriers of pertinence.

9. Any inquiry specifically concerning this communication or earlier communications from the examiner should be directed to F. Vanaman whose telephone number is 571-272-6701.

Any inquiries of a general nature or relating to the status of this application may be made through either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A response to this action should be mailed to:

Mail Stop \_\_\_\_\_  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450,

Or faxed to:

PTO Central Fax: 571-273-8300

**F. VANAMAN**  
**Primary Examiner**  
**Art Unit 3618**



2/23/08